

## **EPA OFFERS MORE TIME FOR COMMENTS ON EDS WELLS**

On December 5, 2002, EPA Region 5 announced its intention to grant an exemption from the land disposal restrictions (LDR) under the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments, (RCRA) in response to a petition submitted by Environmental Disposal Systems, Inc. (EDS). EDS submitted documentation to demonstrate that the hazardous wastes which EDS proposed to inject into Cambrian-age geological formations below 3,900 feet would not leave the injection zone for at least 10,000 years. The EPA published a notice indicating that it had determined that the demonstration met the requirements of Title 40 of the Code of Federal Regulations (40 CFR) Sections 148.20 - 23. (See 67 Fed. Reg. 77981 (December 20, 2002)). The EPA held two public hearings on this proposal and accepted comments until May 16, 2003.

On May 29, 2003, the Michigan Department of Environmental Quality (MDEQ) issued Sunoco Partners Marketing and Terminals, LLC (SPMT) a permit authorizing SPMT to extract brine from the Mt. Simon Sandstone just one half mile from the proposed EDS injection wells. At the time EPA issued its notice of intent to grant the exemption, the MDEQ had denied SPMT's application; and EPA's notice reflected that it had not considered the effects of any extraction, such as the extraction of fluid from the Mt. Simon Formation proposed in the permit application denied by MDEQ.

The MDEQ permit for extraction authorizes SPMT to drill the well into the Lockport, Eau Clair, and Mt. Simon Formations to a depth not to exceed 4,450 feet. The Eau Claire and Mt. Simon Formations (as well as the lower Franconia-Dresbach Formation) also serve as the injection zone for the proposed EDS hazardous waste injection that is the subject of the land disposal restriction exemption determination. The MDEQ permit requires SPMT to submit a plan to test the Lockport Dolomite, which lies at depths from 2,133 to 2,227 feet below the surface and over 1,000 feet above the injection zone, for brine production. The permit also specifies that if the extraction well is completed in one or more Cambrian Geologic horizons below 3,900 feet and EDS begins injection of hazardous wastes, SPMT must test the brine it produces every 15 days and must manage it as hazardous waste pending the results of such testing.

The SPMT extraction permit constitutes new information that raises a question for the land disposal restriction exemption determination. The record of the proposed decision does not include consideration of the effect of the MDEQ permit to drill and operate an extraction well at the proposed location or the effect of such a well, if drilled.

EDS's petition seeks to demonstrate that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous by showing, among other things, that "...the hydrogeological and geochemical conditions at the sites and the physiochemical nature of the waste stream(s) are such that reliable predictions can be made that fluid movement conditions are such that the injected fluids will not migrate within 10,000 years: (A) vertically upward out of the injection zone; or (B) laterally within the injection zone to a point of discharge or interface with an Underground Source of Drinking Water (USDW) as defined in 40 CFR part 146;...."(40 CFR §148.20(a)(1)(i)) The extraction well permit, while requiring SPMT to test the brine production capacity of the shallower Lockport Formation, authorizes SPMT to drill and operate an extraction well in the Mt. Simon Formation within half a mile from the EDS wells.

Because of the new question posed by the SPMT extraction well permit, EPA will accept additional written comments solely on the issue of the impact of the permitted extraction on EPA's land disposal restriction exemption determination. EPA will be responding to all comments including those previously submitted at the time it issues its final determination.